HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 379 / 2006 (S/S)

Shri Madan Mohan Singh

vs

The Conservator of Forest

Approved for reporting

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~~Not approved for reporting~~

Date of decision 21.03.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.379 (S/S) ....OF 2006

Shri Madan Mohan Singh Negi,
s/o Shri late Mahraj Singh Negi,
Posted as Deputy Ranger,
Das-Ki-God Range, Dharsu, Tahri Dam
Forest Division-II, Uttarkashi. ..... Petitioner

Versus

1. The Conservator of Forest, Yamuna Circle,
Uttaranchal, Dehradun.
2. State of Uttaranchal through Secretary,
Ministry of Forest, Secretariat,
Uttaranchal,Dehradun. .....Respondents

Sri C.D. Bahuguna, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 21-03-2006

Hon'ble Rajesh Tandon, J.

Heard Sri C.D. Bahuguna, counsel for the petitioner and the Standing counsel for the respondents.

The present petition has been filed for issuance of a writ of Certiorari quashing the impugned order or punishment dated 24-01-2006 passed by the respondent no.1, contained in Annexure-1 to this petition. A prayer has also been sought to issue a writ of Mandamus commanding the respondents not to

make any recovery from the salary of the petitioner pursuant to the impugned order dated 24-01-2006.

Briefly stated the petitioner was initially appointed on 17-04-1978 on the post of junior clerk in the Forest Department by the order of then Forester, Tehri Forest Circle, U.P.; The petitioner appeared in Forester Examination and was then appointed on the post of Forester in the year 1983 and was thereafter posted in the Mussoori Forest Division, Mussoori, distt. Dehradun. In the month of September 2000, the petitioner was posted in Devalsari Forest Section of Jaunpur Forest Range of Mussoori Forest Division, Mussoori; Thereafter he was promoted to the post of Deputy Ranger, by the order of Chief Conservator of Forest, Garhwal, dated 31-05-2005.

The Conservator of Forest, Yamuna Circle, Uttaranchal, Dehradun, vide order dated 18-03-2004 submitted a Charge sheet against the petitioner and thereby called upon him to submit his reply within 15 days. The prosecution story is to the effect that the Forest department had undertaken combing of trees in Devalsari and Silwad Forest Section of the Mussoori Forest Division, Mussoori and the combing Team found as many as 2487 trunks of trees (Thoonth) on the spot, which indicated illicit felling of 2487 trees. The Combing Team found that in all 622 trees had been fallen down in Devalsari Section and Silwad Section during the period when the petitioner was posted there. However, for purpose of imposing fine, the alleged illicit felling of 97 trees, was taken into consideration.

The allegations against the petitioner in the charge-sheet is that due to negligence of the petitioner a large number of felling of trees had taken place in Devalsari and Silwad Section. The departmental Charge-sheet was received by the petitioner on

28.03.2004. According to the petitioner, after receiving the Chargesheet, he submitted an application before the Inquiry Officer on 06-04-2004 and thereby demanded as many as 8 documents from the Inquiry Officer so as to defend him adequately and properly in the Inquiry proceeding but the Inquiry Officer supplied some documents to the petitioner but did not supply the relevant documents as shown in serial no. 3, 5, 6, 7 of the application dated 06-04-2004 to the petitioner.

According to the petitioner, in serial no.3 of the application dated 06-04-2004, he had demanded very relevant papers, namely, Inspection notes as prepared from time to time by the Deputy Forest Conservator of Forest, Mussoori, Divisional Forest Officer, Mussoori and Range officer Jaunpur Range, during their period of posting in Devalsari and Silwad Section.

According to the petitioner these Inspection notes prepared by the above officers during the period of last several years could have established the correct position about the illicit felling of trees in each year, but the copies of said relevant papers were not supplied to the petitioner and as such the petitioner was denied reasonable opportunity by the Inquiry Officer to defend the charge levelled against him.

The petitioner submitted his reply before the Inquiry Officer on 30-8-2004, a copy of which is contained in Annexure-7 to the writ petition, in which it has been stated that he is being harassed and humiliated by department only on the basis of surmises. In Paragraph 3 of his reply, it has been stated by the petitioner that only 23 trees had been unauthorisedly fallen down in the Devalsari and Silwad Section during his charge in the said Sections and the Forest Guards had already taken legal actions in the regard, and that no other felling had taken place during the

relevant period. In Paragraph 4 of the reply, the petitioner has further stated that if illicit felling had been taken place in large scale during the period of his Charge, there would have been objections of the higher departmental authorities on the Monthly Reports of daily routines but no such objection was ever raised by the Inspecting authorities. In Para.5 of the reply, the petitioner has also stated that at the time of taking charge of Devalsari Section from the petitioner in June 2002, the Forest Guard, Mr. Ram Krishna Dangwal, made through inspection of the area and then charge was taken by him from the petitioner but in his report he did not find any illicit felling during the period of the petitioner.

The Inquiry officer initiated Inquiry against the petitioner pursuant to the departmental Charge-sheet dated 18-03-2004 and recorded statements of the witnesses produced by the prosecution during the Inquiry proceedings.

According to the petitioner, during inquiry proceedings neither copies of the statements of prosecution witnesses were supplied to him nor any opportunity to cross examine prosecution witnesses was given to him by Inquiry officer. The petitioner was neither called upon to adduce his oral evidence nor he was supplied a copy of Inquiry officer's report. An opportunity to make representation against the Inquiry officer's Report was also denied to the petitioner. Opportunity to take assistance from a Government servant of the same department to defend in the Inquiry was also denied to the petitioner.

The counsel for the petitioner has relied an authority of the Apex court in the case- **Uttar Pradesh Government Vs.**

Sabir Hussain, (1975) 4 SCC 703 wherein the following is observed:

> " In view of these stark facts the High court was right in holding that the plaintiff (respondent) was not given a reasonable opportunity to show cause against the action proposed to be taken against him *and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation."*

The counsel for the petitioner has also relied an authority of the Apex court in the case- ***Union of India Vs. Mohd. Ramzan Khan, A.I.R. 1991 Supreme Court-471*** in support of his submission that due to not supplying of inquiry officer's report and other relevant documents to the petitioner, inquiry vitiates in law. The relevant portion of Para 18 of the judgment is reproduced to below:

> *"18. we make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and made the final order liable to be challenged hereafter."*

There is no dispute about the settled legal position as canvassed by the learned counsel for the petitioner. However, there is a provision of filing an appeal against the impugned order of punishment under Section 11 of the Uttaranchal

Government Servant (Discipline and Appeal) Rules, 2003 to the next higher authority of the Disciplinary authority. Since the remedy of appeal is statutory one, it would be expedient to direct the petitioner to approach the appellate authority for redressal of his grievances against the impugned order of punishment.

The learned counsel for the petitioner submitted that the remedy of appeal though statutory, is not effective one, in-as-much as there is no power of appellate authority to grant any stay order as against the impugned order of punishment, and in that circumstances, the purpose of filing appeal would be frustrated because the department is going to make recovery of fine from the salary of the petitioner on the basis of the impugned order of punishment.

Having heard the learned counsel for the petitioner and the learned Standing counsel representing the Sate, I am of the opinion that the interest of justice would be sub-served if impugned order of punishment is kept in abeyance during pendency of the appeal before the departmental appellate authority.

Consequently, liberty is given to the petitioner to file an appeal before the departmental appellate authority within a period of one month. If any delay is found in filing of the appeal, the same shall be deemed to have been condoned. If such an appeal is filed, the concerned departmental appellate authority is directed to decide the same within a period of 4 months. The operation of the impugned order of punishment dated 24-01-2006 shall remain in abeyance during pendency of the appeal.

Subject to the above observations, the writ petition is disposed of. No order as to costs.

Date: 21-03-2006. **Rajesh Tandon, J.**

*Dhyani